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No. 89-1164

In The

Supreme Court of the United States

October Term, 1989

GENERAL MOTORS CORPORATION,

Petitioner,

v.

MARY A. CARLSON, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF FOR THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., AS AMICUS CURIAE SUPPORTING PETITIONER

William H. Crabtree
Counsel of Record

Vice President and General Counsel
Motor Vehicle Manufacturers Association of the United States, Inc.
7430 Second Avenue
Detroit, Michigan 48202
(313) 872-4311

Counsel for Amicus Curiae

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 37.2 of the Rules of this Court, the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), respectfully requests leave to file the attached brief as amicus curiae supporting petitioner. Beverly C. Moore, Jr., counsel for respondents, was contacted by telephone on February 6, 1990, and asked whether respondents would consent to the filing of this brief. Consent was refused.

MVMA is a trade association whose member companies build more than ninety-four percent of all motor

vehicles produced in the United States. MVMA members include Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Manufacturing, Inc.; Navistar International Transportation Corp.; PACCAR Inc.; and Volvo North America Corporation.

MVMA has a vital interest in the legal issues in this case. The Fourth Circuit has held that the durational limitations of implied warranties contained in standard automobile warranties are invalidated under the Magnuson-Moss Warranty Act if there is inequality in the bargaining process between the consumer and the manufacturer/warrantor. That holding threatens durational limitations contained in warranties of all product manufacturers. MVMA's members routinely include such durational limitations in their warranties, as specifically provided in Section 108(b) of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2308(b). The Fourth Circuit's holding takes on particular importance because it allows the standard warranties to be invalidated based on facts that are typical of every-day sales transactions. For that reason, under the Fourth Circuit's test, MVMA's members would be deprived of the statutory authorization that permits the limitation of their warranties. Thus, MVMA seeks leave to file this brief in order to express its members' concern over the industry-wide impact and public importance of the decision below.

MVMA believes that the attached amicus brief "brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties." Sup. Ct. R. 37.1. In particular, MVMA is able to bring to the Court's attention in a concrete way the broad

impact that the decision below, if permitted to stand, would have on the entire automobile industry.

Respectfully submitted.

WILLIAM H. CRABTREE
Counsel of Record
Vice President and General Counsel
Motor Vehicle Manufacturers Association of the United States, Inc.
7430 Second Avenue
Detroit, Michigan 48202
(313) 872-4311

Counsel for Amicus Curiae

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QUESTION PRESENTED

Whether boilerplate "unconscionability" claims can be used to invalidate hundreds of thousands of standard automobile warranties, which limit the implied warranty of merchantability to two and three years' duration, under the Magnuson-Moss Warranty Act.

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BRIEF FOR THE MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE AMICUS CURIAE

For the reasons stated in the foregoing motion for leave to file brief as amicus curiae, the Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA), has a vital interest in the legal issues in this case.

STATEMENT

This case was brought as a class action against petitioner General Motors Corporation (GM) on behalf of a class purporting to number approximately 600,000. Pet. App. 24a. All of the plaintiffs purchased 1981-1985 model year GM automobiles. Most of the named plaintiffs, however, did not claim any difficulties with their automobiles until after the written warranties expired. *Id.* at 33a. Depending on the model year, those warranties lasted either 24 months or 24,000 miles, or 36 months or 50,000 miles. *Ibid.*

Notwithstanding the proper operation of their vehicles for the entire warranty period, those plaintiffs claimed the right to recover damages from GM for breach of the "implied warranty of merchantability." However, GM had expressly taken advantage of the freedom provided by Section 108(b) of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2308(b),[1] to limit the implied warranties to the same time and mileage periods as the express warranties. Plaintiffs argued that such durational limitations are unconscionable and thus unenforceable, but the district court disagreed and dismissed their claims for post-warranty damages. Pet. App. 32a-36a.

The Fourth Circuit reversed, holding that plaintiffs' claims that GM had greater bargaining power than

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[1] Section 108(b) provides: "For purposes of this chapter * * *, implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty."

individual consumers (*id.* at 14a), that engines are designed and expected to last longer than the warranty period (*id.* at 14a-15a), and that GM knew that some of its products would fail *after* the warranty period (*id.* at 15a-19a) were sufficient to invalidate the warranty limitations. The court therefore remanded the unconscionability claims of *all* plaintiffs for a hearing at which the trial court must "carefully examin[e] all relevant evidence of the setting in which the parties struck their bargain" (*id.* at 11a), and the court explicitly defined "relevant evidence" to include "the parties' relative 'bargaining power,' 'sophistication,' 'knowledge' and 'expertise.' " *Id.* at 17a.

SUMMARY OF ARGUMENT

This is not a case in which a court has suggested that an unusual contract term may be "unconscionable," but one in which the Fourth Circuit has said that 600,000 consumers may *all* be able to show that the durational limitations contained in their warranties are unconscionable. Curiously, the Fourth Circuit did not make its holding on the basis that any of these contract terms were particularly oppressive; in fact the court labeled it "irrelevant" that other courts have upheld less generous warranty provisions. Because the warranties at issue are in line with prevailing industry standards for the model years at issue, and the Fourth Circuit apparently regards the length of the warranty as "irrelevant," *every* durational limitation of an implied warranty is threatened by this decision.

That broad holding is not what Congress intended when it expressly authorized durational limitations of implied warranties. It also has severe negative implications for the drafting of warranties. No draftsman can meet any of the Fourth Circuit's concerns about "bargaining power," and the one thing that a draftsman can do to ensure that a warranty is not unconscionable – draft a long warranty – has been rejected by the Fourth Circuit as irrelevant.

Thus, the Fourth Circuit's decision calls into question the conscionability of the warranties of every one of more than 39 million passenger cars sold by U.S. manufacturers in the United States between 1981 and 1985. It also invites litigation, especially class actions, that it will be impossible to dismiss without lengthy proceedings devoted to the "fairness" of the bargaining process, thus defeating the very litigation-avoiding purpose for which durational limitations are designed. Such litigation can be brought in order to coerce settlements, notwithstanding the underlying lack of merit to the plaintiffs' claims. To forestall such wasteful litigation, and to prevent the Fourth Circuit's decision from providing a basis for disrupting every durational limitation of every warranty, this Court should grant certiorari.

ARGUMENT

GM's petition for a writ of certiorari demonstrates the serious errors in the Fourth Circuit's decision in this case. Amicus will not repeat GM's legal arguments, but will instead focus on the reasons why this case is of

sufficient public importance to merit review by this Court.

The Fourth Circuit's decision allows routine invalidation of warranty durational limitations, notwithstanding clear statutory language to the contrary. The court held that lack of bargaining power, failure to warrant the product for its entire expected life, and knowledge of the manufacturer that some products might fail *after* the warranty period were sufficient to invalidate warranty limitations otherwise expressly allowed by the Act. Pet. App. 14a-19a. Motor vehicles, like most consumer products regulated by the Act, are accompanied by warranties from the manufacturer, not the retailer. Thus, the warranties are not normally subject to arm's-length negotiation, and the transactions are necessarily characterized by unequal bargaining positions. Accordingly, the Fourth Circuit's decision calls into question not a few aberrant situations in which extraordinary tactics were used to coerce an unwilling buyer to enter into a contract, but the *typical* situation in which a buyer of consumer goods wishes to shift back to the manufacturer a risk that the contract of sale explicitly places on the buyer, and makes boilerplate allegations about his lack of bargaining leverage.

If hundreds of thousands of contracts are to be subjected to invalidation as "unconscionable," it could be expected that they would contain particularly oppressive terms. Yet the Fourth Circuit's decision specifically disclaims any limitation to especially oppressive contract terms. The Fourth Circuit declared it *"simply irrelevant* that other courts may have found, for example, that 12-

month/12,000-mile implied warranty limitations are 'conscionable.' " Pet. App. 13a n.8 (emphasis added). Thus, the court of appeals is prepared to invalidate as "unconscionable" warranties that other courts regularly accept, on the theory that the length of the warranty is not even relevant. The court likewise indicated unambiguously that it was prepared to invalidate as "unconscionable" even warranties that *are* objectively reasonable. *Id.* at 16a-17a. Again, the opinion makes it quite clear that nothing a manufacturer does can save a warranty's durational limitation from the prospect of being invalidated based on perceived "unfairness" in the *standard* consumer transaction, no matter what the duration of the limitation.

In the five-year periods preceding and following passage of the Act, the prevailing warranty period for domestic motor vehicles was 12 months or 12,000 miles. Beginning in the 1981 model year, warranties for automotive engines have been extended, with manufacturers offering warranties as long as five years or 50,000 miles from 1982 to 1985.[2] The two- and three-year engine

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[2] GM's longest engine warranties were 24 months or 24,000 miles for 1981 and 36 months or 50,000 miles from 1982 to 1985. Chrysler offered 12-month/12,000-mile basic warranties throughout the 1981-1985 period, and offered an additional five-year/50,000-mile power train warranty in 1982-1985. Ford's basic warranty likewise was 12 months or 12,000 miles throughout 1981-1985, with an additional power train warranty of 24 months/24,000 miles and a warranty on the major components of luxury cars of 36 months/36,000 miles. Honda's basic warranty again was 12 months or 12,000 miles throughout 1981-1985, with an additional 24-month/24,000-mile power train warranty in 1982-1985. Since 1986, other terms, including power train warranties as long as six or seven years, have been offered by some manufactuers.

warranties involved in this case were far longer than any warranties offered in the ten-year period surrounding passage of the Act, as long as any offered in 1981, and longer than many offered from 1982 to 1985.

If the law were as stated by the Fourth Circuit in this case, the consequences for MVMA's members would be devastating. GM naturally focuses on the effects that the decision would have on the conduct and outcome of litigation, and those are of deep concern to MVMA as well, as discussed below. It is also important, however, to realize the implications of the Fourth Circuit's decision for the drafting of warranties.

That Congress intended manufacturers to be able to draft enforceable durational limitations of implied warranties is indisputable. Section 108(b) of the Magnuson-Moss Act is phrased as an affirmative grant of that power, subject only to the requirement of conspicuous disclosure and the tests of reasonableness and conscionability. The legislative history is even clearer in indicating that invalidation of a durational limitation should be the exceptional case: "*in a normal situation* an express inconsistent warranty will control and determine the duration of the warrantor's concurrent implied obligations to remedy a defective product." S. Rep. No. 876, 91st Cong., 2d Sess. 22 (1970) (emphasis added). Yet the Fourth Circuit has suggested that nothing a manufacturer can do in fashioning its standard warranties will save them from wholesale invalidation as "unconscionable" if consumers can show that they lack "bargaining power" compared to manufacturers (Pet. App. 14a) – a fact completely beyond the control of the draftsman.

The draftsman will be unable to escape the "unconscionability" label even by providing an extraordinarily long warranty because, according to the Fourth Circuit, it does not matter how generous the duration of the warranty is; rather, the decisions of other courts upholding limitations of any particular duration are "simply irrelevant" (*id.* at 13a n.8), and even an objectively reasonable warranty can be invalidated as unconscionable with respect to hundreds of thousands of consumers (*id.* at 16a-17a). Indeed, the Fourth Circuit was considering warranties of two different durations (24 months/24,000 miles, and 36 months/50,000 miles), yet it said not a word to suggest that the "unconscionability" analysis would differ in any way in the case of the longer warranty. The court appears to regard the length of the warranty as irrelevant, except perhaps in the purely hypothetical case in which a manufacturer warrants its product for its entire expected useful life. Thus, if the decision of the court of appeals is allowed to stand, it appears that no automaker will be able to draft *any* enforceable durational limitation of any warranty in the States covered by the Fourth Circuit for the foreseeable future.

That would be a staggering result. Counting U.S. manufacturers alone, there were 7,413,327 passenger cars sold in the United States in 1989, and a total of 39,701,838 in the period 1981-1985 (the years covered by this lawsuit). The Fourth Circuit's decision suggests that every one of those automobile sales may have resulted in the imposition of an "unconscionable" contract term limiting the duration of implied warranties – notwithstanding Congress's decision generally to permit such limitations. A manifestly incorrect decision with such widespread

negative consequences should not be permitted to stand without review by this Court.

Moreover, MVMA's members share GM's fear that the decision below will give rise to much pointless and wasteful litigation. MVMA's members, like GM, limit the duration of implied warranties in conformity with Section 108(b), and therefore expect to be able to avoid lawsuits for alleged defects that gave rise to repair costs after the warranties expired. Under the Fourth Circuit's decision, however, all that a consumer plaintiff – or a class of hundreds of thousands of consumers – needs to avoid warranty limits is to claim that it would be "unconscionable" to hold him to the warranty because the manufacturer had superior bargaining power and knowledge and did not offer a warranty for the entire expected useful life of the vehicle. It would be the rare consumer who could not make those allegations, even though most such cases would be meritless.

Thus, individual plaintiffs could harass automobile manufacturers with lawsuits for every repair cost, and lawyers could put together large classes of such plaintiffs in order to bring lawsuits solely for their settlement value. Thus, automakers would have to endure costly proceedings to explore the relative "bargaining power" of the parties and all of the other factors that the Fourth Circuit views as indispensable to a "conscionability" determination, no matter how generous the duration of the warranty. Those proceedings would defeat the very litigation-avoiding purpose that the durational limitations were intended to serve in the first place.

As GM has indicated in its petition (Pet. 25 n.16), there have already been numerous class actions for alleged breach of warranty litigated under the Magnuson-Moss Act. Now that the Fourth Circuit has told plaintiffs that anyone who suffered repair costs at any time can avoid the limitations of the warranty simply by alleging that any warranty limitation is "unconscionable" because the automaker has more bargaining power than the consumer, the incentive to file such actions has greatly increased. Class actions of this sort are so unwieldy that a plaintiff class can bring it in the hope of coercing a defendant to make settlement offers just to avoid litigation costs, no matter how little merit there is to the underlying claims, unless the defendant can prevail on a Rule 12(b)(6) motion. By reversing the district court's wholly proper grant of a dismissal order in this case, the Fourth Circuit has misconstrued the law, made the drafting of enforceable warranties virtually impossible, and invited massive but unfounded litigation. Its decision should be reviewed by this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM H. CRABTREE
Counsel of Record

Vice President and General Counsel
Motor Vehicle Manufacturers Association of the United States, Inc.
7430 Second Avenue
Detroit, Michigan 48202
(313) 872-4311

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